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LOGWOOD et al. v. HOLLAND.

Sept. 22, 1921.

[108 S. E. 571.]

1. Vendor and Purchaser (§ 114*)—Purchaser of Orchard Held to Have Waived Right to Rescind for False Representations.—A purchaser of an apple orchard wherein the number of trees had been misrepresented, who failed to offer to return the property and merely sought a rebate from the purchase price, held to have elected to retain the property and to have waived his right to rescind.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 486, et seq.]

2. Vendor and Purchaser (§ 193*)—Sale of Growing Trees Is of an Interest in Land.—Growing trees are part of the realty, and a sale thereof is a sale of an interest in land.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 486, et seq.]

3. Vendor and Purchaser (§ 334 (7)*)—Pecuniary Recovery Allowable in Equity for Mistake Resulting in Loss of Any Part of Realty Affecting Purchase Price.—While bills in equity seeking a purely pecuniary recovery on account of mutual mistake, or mistake of one party through fraud or culpable negligence of the other, have been confined to shortage of acreage, the principle in a proper case may be extended to mistakes resulting in loss of any part of the realty which affected the purchase price.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 486, et seq.]

4. Principal and Agent (§ 188*)—Agent Properly Joined with Vendor in Equity Suit for Shortage of Trees in Orchard Purchased.—In a suit in equity brought against a vendor of an apple orchard and a land immigration bureau which was his agent to recover for a shortage in the number of trees, held, that the bureau was properly joined as defendant; it being charged as primarily responsible for the fraud.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 486, et seq.]

5. Vendor and Purchaser (§ 176*)—Rule as to Compensation for Deficiency in Acreage Stated.—In cases of deficiency in acreage, in the absence of special considerations, the compensation is to be fixed by multiplying the number of acres lost by the average price per acre, and if exceptional advantages exist, as buildings or springs, their relative value is to be fixed with reference to the contract price for the whole estate.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 486, et seq.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

6. Vendor and Purchaser (§ 174*)—Rule of Compensation for Shortage in Number of Trees in Orchard Sold, Stated.—Where an apple orchard was purchased under representations that it contained 500 bearing trees, when there were in fact only 332, the value of the trees lost must be determined with reference to the price agreed upon for the whole estate.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 486, et seq.]

7. Reference (§ 65*)—Exception to Report Properly Overruled Where No Objection Was Made at Hearing.—An exception to the report of a commissioner appointed to assess damages for a shortage of trees in an orchard purchased that the wrong measure of damages was used was properly overruled, where no objection to evidence on that ground was made until the commissioner had made his finding, and no rebuttal testimony was introduced.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 565.]

Appeal from Circuit Court, Bedford County.

Bill by W. B. Holland against J. C. Logwood, Jr., and others to rescind a contract for the sale of real estate or for damages. From a decree overruling defendants' demurrer, refusing a rescission, and directing a commissioner to ascertain damages, and a decree awarding a recovery, defendants appeal. Affirmed.

OLIVER v. COMMONWEALTH.

Sept. 22, 1921.

[108 S. E. 577.]

Intoxicating Liquors (§§ 236 (6½, 7, 20)*)—Evidence Held Insufficient to Support Conviction of Possessing, Transporting, and Offering for Sale.—In the prosecution for illegally possessing, transporting, exposing for sale, and soliciting orders for ardent spirits in violation of the Prohibition Law, evidence held insufficient to support a conviction.

Error to Hastings Court of Richmond.

J. J. Oliver was convicted of violating the prohibition law, and he brings error. Reversed and remanded for new trial.

MATNEY et al. v. YATES.

Sept. 22, 1921.

[108 S. E. 578.]

1. Trusts (§ 372 (3)*)—Evidence Held to Show Release from Trust of Agent Taking Title in Himself.—Where complainants, desiring to

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.